IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 137 of 2001

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

C B I THRO' SUPDT OF POLICE

Versus

ASHRAFALI B SAIYED

Appearance:

1. Criminal Revision Application No. 137 of 2001

MR MUKESH R SHAH for Petitioner

MR EJAZ M SHAIKH for Respondent No. 1

MR HL JANI, PUBLIC PROSECUTOR for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 26/12/2001

ORAL JUDGEMENT

#. This Revision Application under Section 397 read with Section 401 CrPC has been preferred by the

prosecution against the order dated 19th March, 2001 made by the Special Judge, Court No.3, Ahmedabad in Special Case No.5/95. The respondent no.1 is the accused in the said special case.

#. It appears that the accused is an employee of Oil and Natural Gas Corporation, who has been arraigned in the aforesaid Special Case No.5/95 as accused and has been charged for offence punishable under Sections 379 and 114 of the Indian Penal Code and Sections 3 and 7 of the Essential Commodities Act. In course of the said proceeding, the accused - respondent no.1 made Application Ex.8 under Sections 91 and 243(2) CrPC for direction to the prosecution to furnish copies of certain documents referred to therein to the said accused. The said application was heard by the learned trial Judge. The learned trial Judge was of the opinion that the application under Section 243(2) CrPC was premature since the prosecution evidence has not yet been completed. As regards application under Section 91 CrPC, the learned Judge was of the opinion that the same could be made at any stage of the trial and was pleased to grant it partially. Under the impugned order dated 19th March, 2001, the learned Judge was pleased to direct the prosecution to supply copy of Report No.16 dated 13th May, 1991 of Superintendent of Police, CBI, Ahmedabad alongwith the forwarding letter to the General Manager, ONGC to the accused. Feeling aggrieved, the prosecution has preferred the present Revision Application.

#. Mr.M.R.Shah has appeared for the prosecution and has submitted that Section 91 CrPC does not envisage supply of any document to the accused. Even otherwise the document in question is an internal communication between the two authorities. The said document is neither produced before the court nor is it relied upon by the prosecution, the same can not be ordered to be supplied to the accused. In support of his arguments, he has relied upon the judgments of the Hon'ble Supreme Court in the matters of THE ASSISTANT COLLECTOR OF CUSTOMS, BOMBAY & ANR. v/s. L.R.MELWANI & ANR. [AIR 1970 S.C. 962] and STATE OF GUJARAT v/s. SHYAMLAL MOHANLAL CHOKSI [AIR 1965 S.C. 1251]. He has also relied upon the judgment of this Court in the matter of LAXMANSINH DANSINHJI GOHEL & ANR. v/s. STATE OF GUJARAT [1992(2) GLR 1197].

#. The Revision Application requires to be allowed on both the aforesaid grounds. Suffice it to say that Section 91 CrPC, inter alia, empowers a court to direct production of any document or any other thing necessary or desirable for the purpose of any investigation,

inquiry, trial or other proceedings under the code. The said section does not empower a court to direct supply of any document to the accused. The impugned order by the learned trial Judge is, therefore, made beyond his jurisdiction and requires to be quashed and set aside.

#. In the result, the Revision Application is allowed. The impugned order dated 19th March, 2001 made below Application Ex.8 in Special Case No.5/95 is quashed and set aside. Rule is made absolute.

26th December, 2001. (Ms. R.M. Doshit, J.)

/sakkaf